

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREGORY CANTY,

Petitioner,

v.

COMMONWEALTH OF  
PENNSYLVANIA, et al.,

Respondents.

CIVIL ACTION NO. 15-469

**ORDER**

**AND NOW**, this 21st day of September, 2015, after considering the petition for writ of habeas corpus filed by the *pro se* petitioner, Gregory Canty (Doc. No. 1), the respondents' response thereto (Doc. No. 10), the state-court record, and the report and recommendation filed by United States Magistrate Judge Thomas J. Rueter (Doc. No. 11); and no party having filed timely written objections to the report and recommendation; accordingly, it is hereby **ORDERED** as follows:

1. The Honorable Thomas J. Rueter's report and recommendation (Doc. No. 11) is **APPROVED** and **ADOPTED**;<sup>1</sup>

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<sup>1</sup> As indicated above, the petitioner has not filed written objections to the report and recommendation. Although copies of the report and recommendation and the accompanying notice were returned to the clerk's office as undeliverable because the petitioner had not notified the court (as required by this court's Local Civil Rule 5.1(b)) of his change of address, the court located what appears to be the petitioner's address. *See* Ord., Doc. No. 12. The undersigned had the clerk of court send copies of the notice and the report and recommendation to that address by regular and certified mail, return receipt requested. *Id.* Apparently, the Postal Service returned the certified mail as unclaimed with no forwarding address. *See* Unnumbered Docket Entry After Doc. No. 13. Regardless, at this point more than 21 days have passed since the clerk's office sent copies of the documents to him by certified and regular mail, and the petitioner has not notified the court of any change of address or filed written objections. Since neither party has filed objections to Judge Rueter's report and recommendation, the court need not review the report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). Nonetheless, "the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report." *Id.* As such, the court will review the report for plain error. *See Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) ("In the absence of a timely objection, . . . this Court will review [the magistrate judge's] Report and Recommendation for clear error." (internal quotation marks omitted)). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court has reviewed Judge Rueter's report for plain error and has found none.

2. The petition for writ of habeas corpus (Doc. No. 1) is **DENIED** as untimely;
3. The petitioner has not made a substantial showing of the denial of a constitutional right and is therefore not entitled to a certificate of appealability, 28 U.S.C. § 2253(c)(2); and
4. The clerk of court shall mark this case as **CLOSED**.

BY THE COURT:

/s/ Edward G. Smith, J.  
EDWARD G. SMITH, J.